

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 13-10200-GAO

UNITED STATES OF AMERICA

v.

DZHOKHAR A. TSARNAEV,  
Defendant.

ORDER  
November 20, 2018

O'TOOLE, D.J.

This Order resolves several of the pending motions:

The parties have filed a Joint Motion to Unseal Specified Transcripts and Pleadings (dkt. no. 1737). Having considered the parties' submissions regarding the unsealing, the Court hereby directs the Clerk's Office to unseal the following entries and attached documents:

|     |        |        |      |      |      |      |
|-----|--------|--------|------|------|------|------|
| 145 | 575    | 1105-1 | 1444 | 1541 | 1613 | 1658 |
| 146 | 599    | 1146   | 1445 | 1548 | 1621 | 1663 |
| 327 | 600    | 1170   | 1446 | 1553 | 1629 | 1664 |
| 411 | 602-8  | 1243   | 1509 | 1562 | 1630 | 1666 |
| 413 | 867    | 1297   | 1510 | 1573 | 1631 | 1670 |
| 429 | 868    | 1306   | 1521 | 1574 | 1632 | 1671 |
| 435 | 1034   | 1326   | 1526 | 1577 | 1633 | 1735 |
| 436 | 1100-1 | 1327   | 1527 | 1586 | 1656 | 1740 |
| 574 | 1100-3 | 1395   | 1540 | 1602 | 1657 |      |

In addition, the following documents and docket entries shall have redacted copies of the sealed documents proposed by the parties (see dkt. nos. 1737 and 1739) added to the public docket:<sup>1</sup>

|      |      |      |      |      |      |                     |
|------|------|------|------|------|------|---------------------|
| 987  | 1008 | 1012 | 1019 | 1041 | 1075 | 1100-2              |
| 988  | 1009 | 1013 | 1024 | 1049 | 1083 | 1100-4              |
| 1006 | 1010 | 1014 | 1026 | 1052 | 1522 | 1509-B <sup>2</sup> |
| 1007 | 1011 | 1015 | 1028 | 1058 | 1665 |                     |

The following document and docket entry shall have a redacted copy of the sealed document added to the public docket:

1133

The Court reserves on the question of juror questionnaires and will resolve the issue in conjunction with the defendant's contested Motion for Partial Unsealing of Non-Seated Prospective Jurors' Questionnaires (dkt. no. 1738).

The parties' Joint Motion to Seal Attachments to Joint Motion to Unseal Specified Transcripts and Pleadings (dkt. no. 1739) is moot with respect to the attached proposed redactions that will be added to the public docket pursuant to this Order and is otherwise granted. The government's assented-to Motion to Amend the Parties' Joint Motion to Unseal Specified Transcripts and Pleadings (dkt. no. 1747) is granted for the reasons articulated by the government in the motion.

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<sup>1</sup> The parties' proposed redactions (dkt. no. 1739) were filed in hard-copy and are too voluminous for the Clerk's Office to scan. The parties shall therefore submit to the Clerk's Office a digital copy of the proposed redactions on a CD, DVD, or USB drive.

<sup>2</sup> Excepted from the parties' list is Docket Entry 1106-1, which shall remain under seal.

The parties have also filed a Stipulation to Supplement the Record Pursuant to Rule 10(e)(2)(A) (dkt. no. 1744). It was filed by the parties as a motion, but it appears to be intended as a stipulation. See Fed. R. App. P. 10(e)(2)(A). Therefore, the Clerk shall rename the docket entry to correspond to the title of the submission prepared by the parties. However, the Court takes note that a number of documents identified by the parties and resubmitted as exhibits to the stipulation are already recorded on the district court docket. (See, e.g., Stipulation of the Parties to Supplement the Record Ex. B (available at dkt. nos. 295, 295-1 through 295-3, and dkt. nos. 295-4 through 295-8 (bound volume in Clerk's Office Records Room)); Ex. D (available at dkt. no. 1740);<sup>3</sup> Ex. I (available at dkt. no. 1555);<sup>4</sup> Ex. J (available at dkt. no. 1616); Ex. K (available at dkt. no. 1697); Ex. M (available at dkt. no. 1719).) Additionally, the parties represent that Exhibit H is the government's Motion to Strike Certain Mitigating Factors located at Docket Entry 1432, but Docket Entry 1432 is the government's Second Motion to Strike or Modify Certain Mitigating Factors with an exhibit attached. (The government's first motion is located at Docket Entry 1377.) The parties also represent that Exhibit L consists of Ex Parte Attachments to Government's Motion to Disclose located at Docket Entry 1716, but the Court notes there are some variations between Exhibit L and the filing of the same name located at Docket Entry 1716.

The Court also notes that Exhibit G appears to be a copy of a (proposed) memorandum and a declaration by Neil Vidmar, which the Court has stricken from the record numerous times. (See, e.g., Order dated Sept. 2, 2014 (dkt. no. 527); Op. & Order dated Jan. 2, 2015 at 11–12 (dkt. no. 887); Op. & Order dated Feb. 6, 2015 at 2 n.3 (dkt. no. 1021); see also Status Conf. Tr. dated Sept. 18, 2014 at 4 (dkt. no. 580)). Because they are not part of the record at Docket Entry 517, they

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<sup>3</sup> This was resubmitted by the parties in connection with their filings in July 2018. (See Joint Mot. to Unseal Specified Transcripts & Pleadings 1 n.1 (dkt. no. 1737).)

<sup>4</sup> Docket Entry 1555 also contains two exhibits that were not attached to Exhibit I of the stipulation.

could not have been “omitted from . . . the record by error or accident” as Rule 10(e)(2)(A) requires. The Court therefore declines to add Exhibit G to the record of matters properly before district court.

As part of their stipulation, the parties filed on the public record certain exhibits to the defendant’s motion to suppress which are under seal and were not introduced at trial. Defense counsel electronically filed the material as Exhibit B to the stipulation on October 21, 2018 (dkt. no. 1744-1). Counsel simultaneously filed a motion to seal other exhibits to the parties’ stipulation (dkt. no. 1745). Two days later, after the press had reported on the materials, see, e.g., Boston Marathon Bomber’s Handwritten Hospital Notes Released, Associated Press, Oct. 22, 2018, <https://www.apnews.com/8c6e49b9cd924e75a3e8f488286991e7>, the parties moved to seal the “Exhibit B” submission, representing that counsel inadvertently filed the sealed material on the public docket (dkt. no. 1746). Such errors should be avoided in the future. The joint motions to seal (dkt. nos. 1745 and 1746) are granted.

The technical process of executing this Order by the Clerk will proceed as expeditiously as practicable.

It is SO ORDERED.

/s/ George A. O’Toole, Jr.  
United States District Judge